IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15864 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AMAD JUMA SAI (FAKIR) - Petitioner(s)
Versus
ANIRUDDHSINH BHARATSINH SARVAIYA & 2 - Respondent(s)

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Appearance :
MR.HIREN M MODI for Petitioner(s) : 1,
None for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 21/08/2007

ORAL JUDGMENT

1. Mr. Hiren Modi learned advocate for the petitioner seeks permission to delete respondents no. 1 and 2 since they are not necessary parties to the present

petition. Permission is granted. Respondents no. 1 and 2 stand deleted from this proceedings.

2. **RULE**. Since this petition is filed against the order dated 18th April, 2007 passed by Motor Accident Claims Tribunal [Auxi.] Fast Track Court no. 4, Bhuj at Kutch, whereby the petitioner's request for withdrawal of amount of compensation which is deposited in the Fixed Deposit with the Dena Bank at Mundra, Kutch, and the compensation has been awarded to the petitioner in pursuance of the settlement arrived at between the petitioner and the respondent insurance company, there is no need to serve the rule to the insurance company and in its absence, the petition can be decided. It is also informed to this Court by Mr. Modi that there is no appeal pending against the award in the claim petition.

3. The petitioner had sustained serious injuries in a vehicular accident which occurred in the year, 2005. These injuries rendered him completely bed-ridden. He, therefore, preferred claim petition which was settled in the Lok Adalat and on the basis of the settlement, the Tribunal made award granting compensation of Rs.2,40,000=00 without any interest and costs since the matter was settled in the Lok Adalat. The Tribunal,

directed 50% of the amount to be invested in the fixed deposit for a period of five years and as per the Tribunal's order, Rs.1,18,000=00 were invested in the fixed deposit with Dena Bank. Since the petitioner needed this amount for his treatment, he was permitted to withdraw a sum of Rs.50,000=00 by order dated 18th November, 2006 and the balance amount of Rs.68,000=00 was reinvested in the fixed deposit. In the month of March, 2007, the petitioner again applied for withdrawal of the amount on the ground that in the opinion of the concerned Doctor, for some further treatment, and investigation, the petitioner was likely to have considerable improvement. In view of the same, he made an application for withdrawal of the balance amount. That has been rejected by the Tribunal by order dated 18th April, 2007. Against the same, this petition.

4. By order dated 31st July, 2007, this Court directed the Tribunal to inquire into the genuineness of the claim of the petitioner with regard to withdrawal of the amount and to submit the report. In pursuance thereof, inquiry has been made and the statements of the concerned Doctor as well as the petitioner have been recorded. The statement of Doctor which is recorded on 11th August, 2007 reveals that in his opinion, further

treatment may bring improvement in his health and for that expenditure of about Rs.60,000-65,000=00 will have to be incurred. It is also stated that at this stage, it cannot be said with certainty that there will be considerable improvement, but chance can be taken. When this is the situation, and the petitioner himself wants to avail further medical treatment, there is no need to prevent him from withdrawing the amount. When the patient is hopeful, this Court should allow him to avail the treatment and try his luck. It is true that if this amount is spent, he will not have any other amount available with him for maintenance of himself as well as the family members, but as against that, treatment is also equally important and as the medical officer has expressed the possibility of improvement, the Court cannot shut the door for the petitioner. Hence, the impugned order is quashed and set aside. The petitioner is permitted to withdraw the balance amount of Rs.68,000=00 before the date of maturity from the concerned Bank, to enable him to avail the necessary medical treatment.

5. The petition is, therefore, allowed. Rule is made absolute with no order as to costs.

[Akshay H. Mehta, J.]

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